IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 13TH AUGUST 2007 / 22ND SRAVANA 1929

Bail Appl..No. 4869 of 2007()

CRMP.2560/2007 of DISTRICT COURT, PALAKKAD

.....

CRIME NO.18/2007 OF KOLLENGODE EXCISE RANGE

PETITIONER/2ND ACCUSED

KRISHNAN, S/O.CHELLAN, PATHIPARA HOUSE,
MUTHALAMADA, PALAKKAD.

BY ADV. SRI.V.SANTHARAM
SRI.ANTO THOMAS

RESPONDENTS: COMPLAINANT

STATE OF KERALA, REPRESENTED BY EXCISE
INSPECTOR, KOLLENGODE EXCISE RANGE,
THROUGH PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR ADV.SRI.JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 13/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

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B.A.No. 4869 of 2007

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Dated this the 13th day of August, 2007

ORDER

Application for anticipatory bail. The petitioner is the 2nd accused in a crime registered under the Kerala Abkari Act. His father, the 1st accused was allegedly found to be in possession of illicit liquor on 11.7.07.. He was arrested and continues in custody from that date. He at the time of interrogation, allegedly stated to the Detecting Officer that the contra band article was being carried by him as handed over by the petitioner, 2nd accused. Accordingly crime was registered against both the accused, father and son. Investigation is in progress. The petitioner apprehends imminent arrest.

2. The learned counsel for the petitioner submits that the allegations against the petitioner are not justified at all. Absolutely nothing has been collected further to the alleged recovery by the Detecting/Investigating Officers to indicate the complicity of the petitioner. In these circumstances, the petitioner does not deserve to endure the trauma of arrest and detention. Anticipatory bail may, in these circumstances, be granted to the petitioner, it is prayed.

3. The learned Public Prosecutor opposes the application. The learned Public Prosecutor submits that the name of the petitioner and his involvement are clearly indicated in the seizure mahazar as also in

the contemporaneous occurrence report prepared. Father is not shown to have any motive against the petitioner to falsely implicate him. There is not even the allegation that the detecting Officer/ Investigating Officer entertains any animus against the petitioner. In these circumstances, at any rate, this is not a fit case to invoke the extraordinary equitable discretion under Sec.438 Cr.P.C., submits the learned Public Prosecutor.

4. I find merit in the opposition by the learned Public Prosecutor. There are no features in this case suggesting the need for invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. This is an eminently fit case where the petitioner must appear before the Investigating Officer or the learned Magistrate and seek regular bail in the ordinary and normal course. I have no reason to assume that the learned Magistrate would not consider the application for regular bail on merits, in accordance with law and expeditiously.

5. In the result, this petition is dismissed. Needless to say, if the petitioners appear before the Investigating Officer or the learned Magistrate and apply for bail,after giving sufficient prior notice to the Prosecutor, the learned Magistrate must proceed to pass appropriate orders on merits, in accordance with law and expeditiously.

Hand over a copy of this order to the learned counsel for the petitioner.

(R.BASANT, JUDGE)

sj